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CUTCHIN, Mayor, *v.* CITY OF ROANOKE.

March 28, 1912.

[74 S. E. 403.]

1. Appeal and Error (§ 1041*)—Harmless Error—Amending Pleadings.—An amendment of the rule against a mayor to show cause before a municipal court against his removal from office for misfeasance on grounds charged, which omitted a number of offenses originally charged in the rule, was not prejudicial to defendant, but rather favorable to him.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4106-4109; Dec. Dig. § 1041.* 1 Va.-W. Va. Enc. Dig. 587; 7 Va.-W. Va. Enc. Dig. 450.]

2. Municipal Corporations (§ 159*)—Removal of Officers—Proceedings—Admission of Evidence.—The mayor of a city was charged, in removal proceedings, with permitting houses of ill fame to illegally exist, and it appeared that at one time during his administration he turned over the regulation of such houses to the chief of police for about four months. The city offered in evidence a newspaper report of an address by the mayor to the effect that he had decided to assume the position occupied by him since he had been mayor, except the past four months, and that bad results had followed the attempt to break up houses of ill fame; that the police were unable to change the inclination of such people, and had simply scattered them about the city to the danger of respectable people. Held, that the address was admissible in evidence; objection being made only to its relevancy.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 350-356; Dec. Dig. § 159.* 4 Va. W. Va. Enc. Dig. 528.]

3. Evidence (§ 271*)—Self-Serving Declarations.—In proceedings to remove a mayor from office for failure to enforce the law against houses of ill fame, a negress, who had conducted such a house, testified that the mayor, with whom she had had intimate relations, had permitted her to do so. It also appeared that at the time she testified she was under a penitentiary sentence for committing a felony, and that the mayor had refused to testify for her at her trial. To support her evidence as to permission given by the mayor, the prosecution proved by a number of police officers that prior to the negress' prosecution, in which the mayor had refused to testify for her, she had told them that the mayor had given her such permission to conduct houses of ill fame. Held, that evidence of the negress' statement out of court was admissible to support her evi-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

dence in court, in view of the evidence showing possible bias by her against the mayor.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1068-1079, 1081-1104; Dec. Dig. § 271.* 4 Va.-W. Va. Enc. Dig. 344.]

4. Evidence (§ 271*)—Self-Serving Declarations.—With certain exceptions, self-serving statements made out of court are not admissible in evidence to corroborate the testimony of a witness.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1068-1079, 1081-1104; Dec. Dig. § 271.* 4 Va.-W. Va. Enc. Dig. 344.]

5. Appeal and Error (§ 237*)—Waiver of Error—Admission of Evidence.—Where certain evidence was admitted in a proceeding to remove a mayor for misfeasance, upon the promise of the city to connect it with defendant, defendant should have moved to strike the evidence upon failure to connect it with him, and, not having done so, cannot complain on appeal of its submission to the jury.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1386-1388; Dec. Dig. § 237;* Trial, Cent. Dig. §§ 228-252. 1 Va.-W. Va. Enc. Dig. 560.]

6. Municipal Corporations (§ 159*)—Officers—Removal Proceedings—Admission of Evidence.—In proceedings to remove a mayor for failure to enforce the law against houses of ill fame, evidence was admitted that the keeper of such a house threatened to have two policemen removed from the beats, and that the mayor gave the chief of police orders to remove such officers because of the complaints from the woman, and that, in obedience to such orders, the chief ordered the police sergeant to have them removed, which was done. Held, that the evidence was admissible on the charge of malfeasance; the several events being connected.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 350-356; Dec. Dig. § 159.* 5 Va.-W. Va. Enc. Dig. 299.]

7. Witnesses (§ 340*)—Impeachment—Reputation for Chastity.—In proceedings to remove a mayor from office, a female employee of the mayor, who testified that he once locked his office door and put down the blinds and commenced to take liberties with witness, could not be impeached by evidence as to her reputation for chastity.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 1116, 1117, 1119, 1121; Dec. Dig. § 340.* 13 Va.-W. Va. Enc. Dig. 970.]

8. Municipal Corporations (§ 159*)—Officers—Removal Proceedings—Admission of Evidence.—In a proceeding to remove a mayor from office for failure to enforce the law against houses of ill fame, evidence by leading citizens that, during defendant's term of office, the number of such houses had largely decreased, notwithstanding

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a large increase in population, and that the moral condition had greatly improved within that time, was not admissible.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 350-356; Dec. Dig. § 159.* 5 Va.-W. Va. Enc. Dig. 301.]

9. Municipal Corporations (§ 159*)—Officers—Removal Proceedings—Admission of Evidence.—In proceedings to remove a mayor from office for failure to enforce the law against houses of ill fame, a letter from the mayor to the chief of police was admitted in evidence, which requested the chief to arrest any persons keeping a house of ill fame on E. avenue, west of the alley from S. avenue, leaving that portion of E. avenue east of the alley “undisturbed for the present, but have such regulation as you see proper.” The mayor was asked what he meant by “have such regulation as you see proper,” and answered that he meant for the chief to use his discretion in handling that matter. Held, that the question and answer were immaterial.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 350-356; Dec. Dig. § 159.* 5 Va.-W. Va. Enc. Dig. 299.]

10. Evidence (§ 450*)—Officers—Removal Proceedings—Admission of Evidence.—In proceedings to remove a mayor for failure to enforce the law against houses of ill fame, a letter from the mayor to the chief of police was introduced, stating that it was not the mayor’s intention to interfere with the houses of ill fame on H. street, or on the property of A., “but, of course, this does not mean to say that you are not to run every one out of the city, if you see proper.” The mayor was asked what he meant by the statement that it was not his intention to interfere with H. street, or the house located on A.’s property. Held, that the evidence sought to be elicited was inadmissible; the letter not being ambiguous so as to require explanation.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2066-2082, 2084; Dec. Dig. § 450.* 5 Va.-W. Va. Enc. Dig. 301.]

11. Appeal and Error (§ 205*)—Harmless Error—Burden of Showing Prejudice.—An objection to the exclusion of a question will not be considered on appeal, where exceptor does not show the answer expected.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1281, 1282; Dec. Dig. § 205.* 5 Va.-W. Va. Enc. Dig. 377.]

12. Appeal and Error (§ 1053*)—Harmless Error—Admission of Evidence.—In a prosecution to remove a mayor from office for failure to enforce the law against houses of prostitution, evidence was admitted that the mistress of a house of ill fame, who testified in the present proceedings, was sued for a debt in 1903 before the

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep’r Indexes.

mayor's present term of office, and that he was her counsel, and that the debt was paid by illicit intercourse between the woman and plaintiff's agent. The court instructed that, to remove the mayor from office, the jury must find that during his present term of office he unlawfully and willfully neglected to enforce the ordinances against houses of ill fame, or unlawfully permitted and connived thereat. Held, that the admission in evidence of the occurrences before the mayor's present term of office could not have misled the jury to his injury.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4178-4184; Dec. Dig. § 1053.* 1 Va.-W. Va. Enc. Dig. 592.]

13. Trial (§ 28*)—View by Jury—Discretion of Court.—Whether the jury shall view the premises involved rests in the sound judicial discretion of the court, and is not a matter of absolute right.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 77-79; Dec. Dig. § 28.* 9 Va.-W. Va. Enc. Dig. 66.]

14. Trial (§ 28*)—View by Jury.—The court should permit the jury to view the scene of an occurrence only when it is reasonably certain that it will give the jury substantial aid in reaching its decision.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 77-79; Dec. Dig. § 28.* 9 Va.-W. Va. Enc. Dig. 66.]

Error to Corporation Court of Roanoke.

Proceedings by the City of Roanoke against Joel H. Cutchin, Mayor, to remove defendant from office. Judgment of removal, and defendant brings error. Affirmed.

J. W. Henson and Marshall McCormick, for plaintiff in error.

H. M. Smith and R. M. Willis, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.